

STATE OF ILLINOIS

DEPARTMENT OF INSURANCE



Chatham FPD Firefighters Pension Fund

#1 Firemans Square
Chatham, IL 62629

ATTN: James Gerberding, Secretary
Kenneth Kissel, President

NOTICE OF NONCOMPLIANCE

YOU ARE HEREBY NOTIFIED, pursuant to the provisions of Section 1A-113 of the Illinois Pension Code (40 ILCS 5/1A-113) that the Pension Division of the Illinois Department of Insurance (hereinafter the "Department") has determined that the Chatham FPD Firefighters Pension Fund (hereinafter the "Fund") and you in your capacity as a Trustee of the Board of Trustees (hereinafter the "Board") have violated your fiduciary duty **by failing to file a complete Annual Statement for the fiscal year 2009.** In support of this position, the Department states the following:

1. Section 1-101.2 of the Code states in pertinent part:

"A person is a 'fiduciary' with respect to a pension fund or retirement system established under this Code to the extent that the person:

- (1) exercises any discretionary authority or discretionary control respecting management of the pension fund or retirement system, or exercises any authority or control respecting management or disposition of its assets;
- (2) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of the pension fund or retirement system, or has any authority or responsibility to do so; or
- (3) has any discretionary authority or discretionary responsibility in the administration of the pension fund or retirement system." (40 ILCS 5/1-101.2)

2. Section 5/1-109 of the Code provides in pertinent part "[a] fiduciary with respect to a retirement system or pension fund established under this Code shall discharge his or her duties with respect to the retirement system or pension fund solely in the interest of the participants and beneficiaries and . . . :

* * *

(d) In accordance with the provisions of the Article of the Pension Code governing the retirement system or pension fund." (40 ILCS 5/1-109)

3. Section 5/1A-109 of the Code states in pertinent part that "[e]ach pension fund shall furnish to the Department an annual statement in a format prepared by the Department. The Department shall design the form and prescribe the content of the annual statement and, at least 60 days prior to the filing date, shall furnish the form to each pension fund for completion. The annual statement shall be prepared by each fund, properly certified by its officers, **and submitted to the Department within 6 months following the close of the fiscal year of the pension fund...**" (emphasis added)(40 ILCS 5/1A-109.)

4. Section 5/1A-113 of the Code, in pertinent part, states:

(a) A pension fund that fails, without just cause, to file its annual statement within the time prescribed under Section 1A-109 shall pay to the Department a penalty to be determined by the Department, which shall not exceed **\$100 for each day delay**.

...

(d) This subsection applies to any governmental unit, as defined in Section 1A-102, that is subject to any law establishing a pension fund or retirement system for the benefit of employees of the governmental unit. Whenever the Department determines by examination, investigation, or in any other manner that the governing body or any elected or appointed officer or official of a governmental unit has failed to comply with any provision of that law:

(1) The Director shall notify in writing the governing body, officer, or official of the specific provision or provisions of the law with which the person has failed to comply.

(2) Upon receipt of the notice, the person notified shall take immediate steps to comply with the provisions of law specified in the notice.

(3) If the person notified fails to comply within a reasonable time after receiving the notice, the Director may hold a hearing at which the person notified may show cause for noncompliance with the law.

(4) If upon hearing the Director determines that good and sufficient cause for noncompliance has not been shown, the Director may order the person to submit evidence of compliance within a specified period of not less than 30 days.

(5) If evidence of compliance has not been submitted to the Director within the period of time prescribed in the order and no administrative appeal from the order has been initiated, the Director may assess a civil penalty of up to **\$2,000 against the governing body, officer, or official for each noncompliance** with an order of the Director. The Director shall develop by rule, with as much specificity as practicable, the standards and criteria to be used in assessing penalties and their amounts. The standards and criteria shall include, but need not be limited to, consideration of evidence of efforts made in good faith to comply with applicable legal requirements. This rulemaking is subject to the provisions of the Illinois Administrative Procedure Act. If a penalty is not paid within 30 days of the date of assessment, the Director without further notice shall report the act of noncompliance to the Attorney General of this State. It shall be the duty of the Attorney General or, if the Attorney General so designates, the State's Attorney of the county in which the governmental unit is located to apply promptly by complaint on relation of the Director of Insurance in the name of the people of the State of Illinois, as plaintiff, to the circuit court of the county in which the governmental unit is located for enforcement of the penalty prescribed in this subsection or for such additional relief as the nature of the case and the interest of the employees of the governmental unit or the public may require.

(e) Whoever knowingly makes a false certificate, entry, or memorandum upon any of the books or papers pertaining to any pension fund or upon any statement, report, or exhibit filed or offered for file with the Department or the Director of Insurance in the course of any examination, inquiry, or investigation, with intent to deceive the Director, the Department, or any of its employees is guilty of a Class A misdemeanor."

(40 ILCS 5/1A-113, emphasis added.)

5. The Chatham FPD Firefighters Pension Fund has not completed its Annual Statement filing for Fiscal Year 2009, as evidenced by Attachment A.

BASED UPON THE FOREGOING, the Department has determined that the Chatham FPD Firefighters Pension Fund is in violation of Section 1A-109 of the Code in failing to submit its Annual Statement within 6 months following the close of the fiscal year. **In this instance, the Annual Statement should have been filed by November 30 of 2009.** Furthermore, the Department has determined that the individual trustees of the Board as fiduciaries are in violation of Section 1-109 of the Code for failing to cause the annual statements to be filed in compliance with Section 1A-109 of the Code.

YOU ARE FURTHER NOTIFIED, pursuant to Section 1A-113(d) of the Code, that the Fund and the individual trustees for the Board must take immediate steps to bring itself into compliance with the law and that failure to provide written evidence of compliance to the Department **within 30 days** may result in administrative orders requiring the Chatham FPD Firefighters Pension Fund and yourself appear and show cause for noncompliance with the law.

Date: 25 February 2010

ILLINOIS DEPARTMENT OF INSURANCE

A handwritten signature in black ink, reading "Michael T. McRaith", written over a horizontal line.

Michael T. McRaith
Director of Insurance

IN THE MATTER OF :

Chatham FPD Firefighters Pension Fund
#1 Firemans Square
Chatham, IL 62629

ATTN: James Gerberding, Secretary
Kenneth Kissel, President

ATTACHMENT A
AFFIDAVIT OF MICHAEL LANGENFELD

Being duly sworn, I, Michael Langenfeld herein state the following:

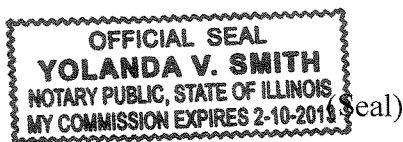
1. I am employed in the Public Pension Division of the Illinois Department of Insurance and hold the position of Administrative Compliance Officer. I have held this position for no less than 9 years.
2. I am familiar with the Illinois Pension Code and the Department's regulation concerning the Annual Statement filing requirements for public pension funds. Under these laws and regulations, the Chatham FPD Firefighters Pension Fund is required to file an Annual Statement with the Public Pension Division of the Illinois Department of Insurance. This Fund's Fiscal Year ends on or about April 30 of each year. Thus, this filing should have been made by November 30 of 2009.
3. I have reviewed the files of the Department's Public Pension Division and have found that the Chatham FPD Firefighters Pension Fund did not have a completed Annual Statement filed for Fiscal Year 2009 at the time this affidavit was signed.

Further, affiant sayeth not.

Michael Langenfeld

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

I, Yolanda Smith, a Notary Public in and for said County and State, aforesaid, do hereby certify that Michael Langenfeld, personally known to me to be the same person whose name is subscribed below, did affix his signature hereto in my presence on this 19th day of February, 2010.



Yolanda Smith
Notary Public

My Commission expires: 2/10/2013